

CLERK'S OFFICE U.S. DIST. COURT
AT CHARLOTTESVILLE, VA
FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

AUG 19 2020

JULIA C. DUDLEY, CLERK
BY:  DEPUTY CLERK

JOSEPH DRAEGO,

Plaintiff,

Appearing Pro Se

Civil Action No. 3:20-cv-37

v.

RaShall M. Brackney, Chief of Police for the

City of Charlottesville;

Joseph D. Platania, Commonwealth's Attorney

For the City of Charlottesville.

Defendants.

STATEMENT OF PRO SE PLAINTIFF JOSEPH DRAEGO

IN RESPONSE TO DEFENDANTS' RESPECTIVE MOTIONS TO DISMISS

I offer this statement in hopes the Court will not dismiss my Complaint without a hearing during which I can speak directly to the Court. In support of this request I offer the following quote by the late Supreme Court Justice Felix Frankfurter. "The heart of the matter is that democracy implies respect for the elementary rights of men, however suspect or unworthy; a democratic government must therefore practice fairness; and fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights." *Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 170 (1951) (Frankfurter, J. concurring).

Only by addressing the Court directly do I believe I can fully express why I believe I should have standing to challenge Virginia's so-called "Red Flag Laws" because of their "chilling" of my Second Amendment rights and my right of free speech under the First Amendment. As Justice Thurgood Marshall wrote on how the threat of punishing speech often can be as effective in silencing speech than actual punishment, "the value of a sword of Damocles is that it hangs -- not that it drops." *Arnett v. Kennedy*, 416 U.S. 134, 231 (1974) (Marshall, J. dissenting). That there are some in the Charlottesville community that will use the Red Flag Laws to punish me for my political expression is not speculation. As a result of speaking during the public comment session of Charlottesville City Council on June 20, 2016 opposing --not all Muslim immigration, but unchecked Muslim immigration, flyers around the city were posted calling me a "local Nazi" who "is best known for ... spewing anti-Muslim hate speech, is a close associate of Jason Kessler" [I am not] and stating I am "a known open and concealed firearm career." Only by speaking to the Court directly can I fully express how it makes one feels to know that my family and friends see such flyers. Others have made connections between my political views

and my gun ownership. In a comment on Facebook on February 4, 2018, one individual described me as an “avowed Islamophobe” and highlighted the fact that I carried guns. In the aftermath of the Commonwealth enacting its “Red Flag Laws” I have refrained from engaging in speech that may make the subject of an emergency substantial risk order or substantial risk order.

I agree with the late Supreme Court Justice William Brennan that “[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989). I believe Virginia’s laws pose such a prohibition, by allowing some who oppose my political views and gun ownership the means to refrain from exercising my First and Second Amendment rights.. This law allows those who oppose gun ownership and who disagree with my political views to initiate state enforcement actions that will could potentially strip me of my constitutional rights, if even but for a temporary period of time. . If this law stands, my only recourse is to silence myself. This forced choice between either self-censorship or losing other valuable rights—merely because a majority of other citizens find my political speech offensive—is the very “hallmark of an authoritarian regime.” *Ginzberg v. United States*, 383 U.S. 463 (1966) (Steward, J., dissenting). Because of the importance of these constitutional principles, I ask the Court to allow me to make my case in person.

Lastly, I read that there are essentially two antithetical philosophies concerning American jurisprudence. The three lawyers that oppose me appear to take the side of the positivists. This philosophy upholds that only judges and government will decide what is relevant legal principle, and only they have the right to govern the outcome of a dispute. They

argue for process and appearance. They promote the notion that only they have a say about what should be heard. Conversely, I champion the naturalist philosophy of jurisprudence, which elevates principle and spirit above rote process. Rote process can inadvertently convolute justice. Naturalist jurisprudence rightly includes individual morality, individual human reason and individual conscience, all of which mirror the rights enshrined in our sacred laws.

The Constitution and Bill of Rights are deeply spiritual documents that advance the cause of humanity and the rights of the individual. I am an individual, I am an American, and I am petitioning my Government for a redress of grievances.

Respectfully submitted

8/19/20 /s/ Joseph Draego

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CERTIFICATE OF SERVICE

I, Joseph Draego, Pro Se Plaintiff in this matter, do hereby certify that the copies of the foregoing

**STATEMENT OF PRO SE PLAINTIFF JOSEPH DRAEGO
IN RESPONSE TO DEFENDANTS' RESPECTIVE MOTIONS TO DISMISS**

were sent email and mailed via the U.S. Postal Service, first-class postage prepaid, to the persons and addresses below, on August 19, 2020.

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Respectfully submitted,

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